



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 18, 1998

Mr. Thomas R. Thompson  
General Counsel  
Texas Commission on Fire Protection  
P.O. Box 2286  
Austin, Texas 78768-2286

OR98-3184

Dear Mr. Thompson:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 121020.

The Texas Commission on Fire Protection (the "commission") received a request for the following information relating to certified fire fighters employed by the San Antonio Fire Department for the last five years: 1) name, 2) date of certification, 3) address, and 4) criminal conviction. You have provided the requestor with the first two categories of information. You state that the remaining requested information is excepted from disclosure pursuant to sections 552.101 and 552.117 of the Government Code.

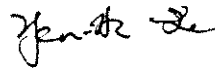
Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Criminal history information obtained from the National Crime Information Center or the Texas Crime Information Center is generally confidential by law. 28 C.F.R. § 20; Gov't Code § 411.083. Criminal history information that has been compiled by a governmental entity is protected by the common-law right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Thus, you must withhold any such criminal history information under section 552.101.

Section 552.117(1) of the Government Code requires that the commission withhold its *employees'* and *former employees'* home addresses, telephone numbers, social security numbers, and information that reveals whether the employee or former employee has family members, but only to the extent that the employees and former employees have elected to keep this information confidential in compliance with section 552.024. *See Open Records Decision No. 530* (1989) (employee must make election prior to receipt of open records

request). Section 552.117(1), however, does not protect the names, home addresses, and telephone numbers of any other class of individuals. *See, e.g.*, Open Records Decision No. 455 (1987) (home addresses and telephone numbers of job applicants not protected under section 552.117). The fire fighters at issue are employees of the San Antonio Fire Department, not the commission. You state that "the commission has no way of determining whether or not . . . an election [under section 552.024 of the Government Code] was made by the employees of the San Antonio Fire Department and must presume that an election was made not to disclose the information." Section 552.024 provides that an employee of a governmental body may deny public access to certain information "in the custody of the governmental body." Here, the commission is not the employing governmental body of the fire fighters nor does it appear that the information has been obtained from the employing agency. Thus, section 552.117(1) is inapplicable in this instance and you must release the requested addresses.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/nc

Ref.: ID# 121020

cc: Ms. Veronica G. Cortes  
6822 Forest Meadow  
San Antonio, Texas 78238  
(w/o enclosures)